S. HRG. 99-82

# NOMINATION OF THOMAS MORGAN ROBERTS

## HEARING

BEFORE THE

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF THOMAS MORGAN ROBERTS TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

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JUNE 18, 1985

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# CONTENTS

## OPENING STATEMENTS


| | Page |
|---|---|
| Mitchell, Hon. George J., U.S. Senator from the State of Maine | 1 |
| Simpson, Hon. Alan K., U.S. Senator from the State of Wyoming | 2 |
| Stafford, Hon. Robert T., U.S. Senator from the State of Vermont | 1 |
| Roberts, Thomas Morgan: | |
| Statement of | 3 |
| Responses to committee questionnaire | 20 |
| Memorandum from the general counsel, Nuclear Regulatory Commission | 28 |
| Responses to additional question from: | |
| Senator Stafford | 30 |
| Senator Hart | 44 |
| Senator Mitchell | 76 |
| Union of Concerned Scientists, statement of | 87 |

# NOMINATION OF THOMAS MORGAN ROBERTS

WEDNESDAY, JUNE 18, 1985

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
*Washington, DC.*

The committee met, pursuant to notice, at 2 p.m., in room SD-406, Dirksen Senate Office Building, Hon. Robert T. Stafford (chairman of the committee) presiding.

Present: Senators Stafford, Simpson, Symms, Bentsen, and Hart.

Senator SIMPSON. Good afternoon. The chairman will be arriving shortly. He has a statement we will insert in the record at this point. I will also insert a statement from Senator Mitchell.

[The statements follow:]

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

The hearing this afternoon is to consider the nomination of Thomas M. Roberts to be a Commissioner of the Nuclear Regulatory Commission.

Mr. Roberts was nominated by the President, confirmed by the Senate, and has served as an NRC Commissioner since 1981. He was renominated by the President on june 5 to serve a second term.

NRC Commissioners are called on to make decisions that affect the safety and well-being of people in this country and abroad. Their responsibilities are heavy, and their judgment must be sound.

We will be reviewing with Mr. Roberts decisions he has made during his years as Commissioner and will explore his views of issues currently facing the Commission.

I hope that from our questions the nominee will understand how important this Committee considers the position he holds and for which he has been renominated.

If he is reconfirmed by the Senate, as I expect he will be, I hope he knows that we will continue to regard his and his fellow Commissioners' actions with the utmost interest and attention.

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STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

I am pleased to join the Chairman and other members of the Committee in welcoming Commissioner Roberts to this afternoon's hearing. The Committee most years holds confirmation hearings on a prospective commissioner for the Nuclear Regulatory Commission, so in that regard, this hearing is not extraordinary. But in one regard, this nomination and these hearings are a departure from normal proceedings.

Confirmation hearings provide the Senate, and the appropriate authorizing committee, an opportunity to question any appointee, on the record, about that person's views on the agency, board, commission, or department to which the person has been appointed. It enables the Senate and the Committee to develop a sense of the individual's qualification and fitness for the position. The confirmation hearing allows the candidate to hear clearly the Committee's concerns and priorities for the position to which the candidate has been nominated.

In the great majority of cases, that exchange of views, those expressions of purpose and priority, that sense of concern are prospective in nature. What challengers or problems faces the candidate when he or she takes office. In Commissioner Rob-

erts' case, however, he has been a Commissioner for several years. He has already made many decisions affecting the conduct of the NRC's regulatory and investigatory activities. He has participated in Commission proceedings, he has voted, he has created a record of action that this Committee can and should utilize in its determination of his suitability to be a member of the Nuclear Regulatory Commission for another five years. To some extent, it is that record which I intend to pursue with Commissioner Roberts today and in the written questions I will submit following this hearing.

I look forward to reviewing the responses of Commissioner Roberts. I am hopeful that his responses at this hearing and to the written questions will provide a clear record upon which the Senate can make a reasoned judgment on his nomination to remain a member of the Nuclear Regulatory Commission.

## OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. I also want to thank the chairman for scheduling this committee meeting.

I join in welcoming Commissioner Tom Roberts back before this committee for our confirmation hearing on the nomination by the President. In addition, I want to say that it is an opportunity for us to consider this nomination prior to the Fourth of July recess. I believe his term expires June 30, so again, the chairman has done an extraordinary accommodation and I'm deeply appreciative.

Well, sir, I've had the opportunity to come to know you over the past 4 years since you first joined the Commission in August 1981. As with all of the Commissioners, I meet periodically with them and have met with you, Tom, on a one-on-one basis and have come to know you as a very hard-working and dedicated individual with some very clear views on the issues of the day.

If you are again confirmed by the Senate, I look forward to a productive working relationship with you as the Congress and the Commission grapple with all of the tough and emotional issues involving the regulation of commercial nuclear power. And certainly, the issues confronting the NRC today and over the course of the next 5 years—and that's the term of your nomination—are and will continue to be just as controversial as any of those in the 10-year history of the agency.

I think people sometimes forget that we have 95 reactors licensed to produce electricity in this country, and about 30 under construction. And the regulatory task confronting this agency has never been so significant as it is today. And, in addition, the Commission is in the midst of addressing the controversial and unprecedented issues such as the restart of Three Mile Island unit No. 1 reactor; licensing of the Shoreham nuclear powerplant; licensing and regulation of long-term nuclear waste disposal facilities; establishment of some disciplined, comprehensive approach for the imposition of regulatory backfits; we've got problems with regard to the issue of continuing with the collegial body or with a single administrator—there really is no shortage of challenges facing you as NRC Commissioner in another term, and I look forward to working closely with you over these next 5 years, upon your confirmation, as we work to come to grips with these very tough issues, and indeed, they will prove to be so.

So I thank the chairman. I would ask you to proceed with whatever statement you might have.

## STATEMENT OF THOMAS MORGAN ROBERTS, NOMINEE TO BE COMMISSIONER, NUCLEAR REGULATORY COMMISSION

Mr. ROBERTS. Thank you. I appreciate your kind remarks.

Mr. Chairman, members of the committee, I am very happy to accept the President's nomination to serve a second term as Commissioner of the Nuclear Regulatory Commission and to come before you for my confirmation hearing. I find it a great privilege to be given the opportunity to serve my country. In this regard, I am ever mindful of the challenges ahead as well as the opportunities. I am accepting this challenge because I personally believe there is much still to be done at the Nuclear Regulatory Commission.

During my first term, the Commission has taken steps towards bringing rationality and accountability to the regulation of civilian nuclear power. It has been, at times, a long and arduous road but we have taken positive steps in the right direction. For example, the Nuclear Powerplant Licensing and Standardization Act of 1985, which Senator Simpson so kindly introduced on our behalf, is an achievement of which we can be proud.

Indeed, we have had accomplishments during my first term: The increased emphasis on backfit management, the Commission's support of standardization, and our increased emphasis on operating experience and performance oriented regulation, to name a few. Yet, we cannot rest on past accomplishments. Even as we continue our efforts to bring more efficient and effective management to the NRC, we must turn our attention to the goal of restoring credibility to the regulation of civilian nuclear power.

The problems confronting the regulation of nuclear power are various and complex. There is no single solution. However, the Nuclear Regulatory Commission must have a system of regulation which will assure that the public health and safety are protected through accurate analysis, critical oversight and strict but fair enforcement of its rules, practices, and procedures. We must continue to be committed to the safe operation of nuclear powerplants so that the country can enjoy all its energy resources and the public be assured that their health and safety are protected.

We must have safe disposal of high-level waste so that our legacy to our children is something of which we can be proud. We must foster a recognition of the importance and effects of our export/import actions. In other words, we must be tough but fair regulators.

Neither the public, those we regulate, nor the Nation can afford quick fixes or the luxury of endless debate. We, at the Nuclear Regulatory Commission, must be able and ever willing to make the hard decisions that are needed to protect the public health and safety. I pledge to you that I will.

Thank you, sir.

Senator SIMPSON. Thank you. I have several questions that I might pose.

You are one of the three sitting Commissioners at the NRC who have taken the position that the existing approach to the licensing and regulation of commercial nuclear power would likely be substantially improved if the collegial Commission were converted to

an agency headed by a single administrator. You have now served as a Commissioner of the NRC for nearly 4 years, and based upon that experience, would you please share with the committee whether you do think the existing collegial structure is working well? And if not, why not? And why you feel that a change to a single administrator might improve the situation?

Mr. ROBERTS. Well, certainly, I'd be happy to give you my views.

No, I don't think the present form of organization is effective or that it is efficient. And no one who has ever studied the NRC has come to any other conclusion. All of the studies that resulted after the accident at Three Mile Island, the Kemeny Commission, the President's Commission, and the Rogavin report, which was commissioned by the agency itself, all—one of the major recommendations is to replace the so-called collegial body with a single administrator. It is not a collegial body. I'm sure I'm going to get some questions, probably later on, but we've created a minor firestorm over these proposed changes in interpretation of the sunshine rules. Our purpose is not to subvert the purpose of the Sunshine Act; the purpose was to try to give us the ability to communicate with each other openly and without, to me, the chilling thought that something I say to one of my colleagues all of a sudden ends up in the trade press.

In no way were we trying to subvert the Sunshine Act, but that's what we're being accused of. Somebody has said we built a—they had a very colorful phrase—we have built a "lead shield" around our deliberations. That's absolute nonsense.

We don't communicate. I think we overly react to the Sunshine Law requirements.

Three parts to the question—is it working? No. Why? I don't know how candid to be. Let me take it from the negative.

The idea that the collegial body, with people from five different backgrounds, you're going to have this great input of—this person has this wealth of experience here, and this one here, and this one here, and so forth—that is theoretically very good. It doesn't work, and we spend countless hours trying to do something simple like answer a letter to Congress.

Senator SIMPSON. I know. I'm still waiting for some.

Mr. ROBERTS. Well, I'm sure you are. But every Commission office has to bless those pieces of paper, and people take a position and dig their heels in, and we're at loggerheads.

The third part, do I favor a single administrator? Emphatically, yes. I have read the bill you introduced. It certainly seemed sound to me, with some provisions, meaning—and I think that this is not in your bill—the person should not serve a statutory term. The single administrator should be appointed by the President and confirmed by the Senate, but not serve a statutory term.

Senator SIMPSON. Well, I, Commissioner Roberts, am not even attempting to lobby you about my bill. I put that bill in with the full support of this committee chairman, who allows me to do that; and becoming very troubled that I find five people of diverse backgrounds who are unable to sit down and talk about anything. I just can't believe that the American public is going to swallow that. I knew what would happen when somebody started to talk about the Sunshine in Government Act, that their neck muscles would all

pump up and they'd fall flat on their faces in a paroxysm of anguish.

The issue is, "Well, if it doesn't work, why don't we do something to make it work?" But I knew that the minute that someone would toy with that, that the old mail room would break down, so we won't toy with it or even deal with it honestly. I don't think anyone intended that the Sunshine in Government Act should prevent a five-member collegial body from sitting down and talking.

Mr. ROBERTS. But in effect, it has.

Senator SIMPSON. But in effect, it does, as long as the interpretation is put upon it by not just one layer of attorneys in the NRC but two layers of attorneys in the NRC. I might ask you, how does the two-layer system of lawyers work in the NRC?

Mr. ROBERTS. Not well. If it were my choice to make, we would combine those offices. Now, the argument is made that as long as we are scattered out in 10 or 11 locations, that wouldn't accomplish anything; that those of us on H Street where the Office of the General Counsel is—what are you going to do on paper by combining them? Maybe there's some merit to that argument, but then also, let's turn that around. Maybe that would make some merit for trying to get some help to get us consolidated.

Senator SIMPSON. Well, I know that's an important issue, consolidation, but yet there is this issue with regard to the legal counsel or the legal advice you're getting, where sometimes you're even isolated from your staff. You can't speak to the staff members because something is under adjudication and therefore you're prevented from speaking on it.

Mr. ROBERTS. I think that inhibits our ability to make intelligent decisions.

Senator SIMPSON. Well, when we get to that bill about the single Administrator, we'll ask some other questions of you and the other members.

Right now I must go vote, and again, I want to publicly pay my sincerest respects to the chairman. You've been, as usual, very accommodating to schedule this hearing before the June 30 expiration date, on such short notice, and I deeply appreciate that and I deeply appreciate the remarkable support you've given me in this activity as subcommittee chairman. I am personally appreciative. And thanks to the staff, the whole crew who do so much on both sides of the aisle.

Senator STAFFORD. Senator Simpson, let me say that your work as chairman of this subcommittee is very gratifying to the chairman and I'm deeply appreciative of the fact that you've been willing to carry on this work for several years. I hope that it will be several years more.

Senator SIMPSON. I don't.

Senator STAFFORD. We want the people in the hearing room to realize that we're operating under some difficulty this afternoon because one rollcall vote has just gone into second bells, and as soon as it is concluded there will be another. We will try, however, as best we can, to continue between these two rollcalls which we didn't anticipate when we set the hearing for 2 o'clock.

I see that you've made an opening statement, Mr. Roberts.

Mr. ROBERTS. Yes, I have.

Senator STAFFORD. I have a short opening statement which I will, without objection—and I see nobody here to object—will place in the record at the outset of this hearing.

Mr. Roberts, do you know of any matters which you may not have thus far disclosed which might place you in any conflict of interest position if you're confirmed in this position?

Mr. ROBERTS. Not to my knowledge. I do not think so.

Senator STAFFORD. Are you prepared at the request of any committee of the Congress to appear in front of it as a witness?

Mr. ROBERTS. Yes.

Senator STAFFORD. My next question concerns the Price-Anderson Act. What I would like to do here is to give you a short opportunity to clarify the record on an issue that was raised in Congressman Udall's hearings on Price-Anderson.

Commissioner Roberts, originally the Commission unanimously supported the NRC's 1983 report to Congress on the Price-Anderson Act. That report recommended that the existing overall liability limit be replaced by an annual limit with no overall cap for a single accident. At Congressman Udall's recent hearing on the act, several Commissioners stated they no longer supported this recommendation. You stated you would prefer an increased absolute limit, possibly as proposed in Senator Simpson's bill. At the hearing it was noted that the shifts in position occurred after Commissioners had individual, private meetings with an official from the nuclear industry.

Would you please explain the reasons for your change of views and whether you believe there is any validity to the criticism as to the manner in which you changed positions?

Mr. ROBERTS. Well, yes, sir. Let me say this. I have not changed my position in continuing to think that the purpose of Price-Anderson or its later life is to provide timely and full compensation to anyone injured as a result of an accident covered by it. I have changed my approach or method of doing that.

Now, I did, in fact, meet in my office with representatives of the utilities. I certainly had legal counsel with me, and I think that one of the Congressmen at that hearing said that I had been "huffed and puffed at" by the industry. I would assure you that nobody huffed and puffed at me. It was more gathering information and listening to their point of view. I certainly was not in any way coerced or intimidated; and, quite frankly, there have been some events that have occurred since 1983 that would make one rethink one's position. Particularly, I'm specifically speaking of the terrible tragedy in Bhopal. I think this, at least for me, heightened people's awareness of what some of these catastrophic occurrences can result in.

So my basic position has not changed. I think Price-Anderson has merit to provide timely and full compensation. I do think there are several ways to address the problem.

Senator STAFFORD. Mr. Roberts, are there any members of your family here today?

Mr. ROBERTS. Unfortunately, my home is Memphis, TN, and their trip has been scheduled for a long time. My wife and three children are in Memphis, TN, visiting my 86-year-old mother.

The answer is no, sir. My wife begged me—she said, and was almost insistent—I said: "I really don't think I need you, and it's a $400 air fare," and she decided that maybe I was a big boy and she didn't need to be here.

Senator STAFFORD. That last answer, you sound like a Vermonter at work.

Well, we only wanted an opportunity to introduce any members of your family.

Mr. ROBERTS. Well, I appreciate your consideration, and thank you.

Senator STAFFORD. In 1984, the NRC concurred in the Department of Energy's siting guidelines for high-level waste repositories. The Commission stated that it and DOE agreed that the preliminary determination required by section 114(f) of the Nuclear Waste Policy Act should be made after the completion of site characterization, and not at the time of site nomination and recommendation. The NRC staff has reasserted this position in its comments on various draft documents prepared by DOE that do not reflect disagreement.

At this time, do you have any reason to change the position you took on this issue in July 1984?

Mr. ROBERTS. There is a disagreement, and it's—I'm not so sure how significant it is. I take a rather narrow view of what the NRC's responsibilities are. Our concern is public health and safety. I don't think it is a proper concern of ours on how the Department of Energy carries out its mandate from the Congress.

It is my understanding we are going to meet shortly with representatives of DOE who will talk about their—what's the precise term?—preliminary determinations, and we will get into this issue. I have an open mind.

Senator STAFFORD. All right.

I believe you stated previously there is no collegiality at NRC. Other than seeking amendments to the Sunshine Act or NRC's regulations implementing the act, what do you think can be done and what do you plan to do, if anything, if reconfirmed, to improve collegiality among the Commissioners?

Mr. ROBERTS. Gee, I wish I had a ready answer for that.

Well, in my own view, having been there for 4 years, it is my opinion that this agency is overzealous in its interpretation of the Government in Sunshine Act. Now, I'm not going to argue with the rightness or properness of Government in Sunshine; but as with anything, you can carry it to extremes. And I think our restrictive interpretation of the Sunshine Act inhibits our ability to communicate with each other and to make sound judgments.

As to how to improve collegiality, I'm going to have to beg off on that one. I don't know. Before you came in I wanted to say something to Senator Simpson—we were talking about the collegial body versus the single Administrator, and he said something about "these people with these five diverse backgrounds,"—something I didn't know until Chairman Palladino swore me in in August 1981. I am the only member of the Commission not to come either from academia or the Government, so I wouldn't say there's a great wealth of diverse background.

Senator STAFFORD. Less than seriously, I was going to say that in my Navy days, we had a way of restoring collegiality, but I'm not sure it would be appropriate for the NRC.

One more question, then we're going to submit the rest in writing.

Mr. Roberts, you originally supported the NRC's Nuclear Powerplant Licensing and Reform Act of 1983. You now support, as we understand it, the NRC's Nuclear Powerplant Licensing and Standardization Act of 1985 which differs from the previous bill. Please explain, if you will, the reasons for your change in position.

Mr. ROBERTS. My support of the 1983 was lukewarm, to say the best. This is part of the collegial process. We hammered out one thing in 1983 and we hammered out something else in 1985.

Senator STAFFORD. Would you repeat that?

Mr. ROBERTS. Well, the 1983 bill, I was not an enthusiastic supporter of; but to try to be a part of the majority and give it some credibility I did say yes, I endorse this. In 1985 we have a different product, and this is the result of give and take and negotiations and what you do try to accomplish under the so-called collegial process. So they are slightly different, but I don't think substantially.

Senator STAFFORD. All right, Mr. Roberts. The rest of the questions I have in mind I'm going to submit to you in writing. If you will respond to them as early as convenient, it will be appreciated.

Mr. ROBERTS. I certainly will.

Senator STAFFORD. I understand that Senator Hart is coming back to the hearing room, so we'll stand at ease, I guess, until he can get here. There's about to be another vote and obviously the chairman's going to have to go over and cast a vote when it starts.

Mr. ROBERTS. Well, at this point may I echo what Senator Simpson said, and on my behalf, thank you very much for holding this hearing.

Senator STAFFORD. I think we'll just say the committee is in temporary recess until Senator Hart can get here.

[Recess taken.]

Senator STAFFORD. I am going to call the meeting to order just long enough to make an announcement. Mr. Roberts, you don't need to come in for this unless you want to.

Mr. Hart is coming back; he will be here as soon as he can vote, and he does have questions and the Chair has asked that he adjourn the meeting when he has completed his questions.

The Chair wants to reserve to any members of the committee in general and to Mr. Simpson in particular the right to submit any questions in writing which they might wish to. And having said that, we will again go into recess until Senator Hart can get here.

[Recess taken.]

Senator HART. The hearing will come to order.

Commissioner, I apologize for the interruption. We've had a couple of votes, as you know.

I do not intend to go back over, at any considerable length, any ground that's already been covered but I would like to address a few questions, if I may, of my own on one or two issues that I know other members of the committee have asked about.

Of some concern to me is the issue of the drift of the Commission back toward meetings not available to the public, the so-called Sunshine issue. I understand that in response to some question you've already given at least a brief comment on that, somewhat to the effect that a collegial body or Commission of this sort operates under some conditions best behind closed doors.

First of all, would you expand on that just briefly, if you would, and then I'd like to pursue that line of thinking.

Mr. ROBERTS. Well, I have read your prepared statement; I have also read your remarks on the Senate floor.

Speaking for myself and, I think, the others who joined the majority on this issue, it was not our intent to subvert the purposes of the Sunshine Act. It was, perhaps in retrospect, clumsily done, but it was an endeavor to allow us to communicate with each other better and be able to have a better decisionmaking process.

Senator HART. How can you communicate better without the public there?

Mr. ROBERTS. I think when you talk about some issues, for me there is a chilling effect if everything that might come to mind has to be said in public. It is inhibiting to the discussion, in my judgment.

Senator HART. Well, I can understand that on a human level, but we're dealing here with the public's business, not——

Mr. ROBERTS. Well, I understand that.

Senator HART. These meetings are not held for the convenience of Commissioners; they are held in the public interest. And I assume we could pursue that argument to say that the Senate might let its hair down a little more if we'd just close the doors, not have reporters in there or the public. The Senate is a collegial body as well.

What do you have to talk about, the outcome of which is enhanced by closing the doors? In other words, how do you better protect the public safety and the public interest behind closed doors, other than just the convenience of calling each other by your first names, or maybe bad names?

Mr. ROBERTS. Well, let me make a comment on your remarks. Certainly, yes, we don't meet for our own convenience; I acknowledge that. We have certain duties and responsibilities that we endeavor to discharge.

We have a different point of view. I just think there are some circumstances where——

Senator HART. Well, I haven't expressed a point of view yet. I'm asking questions, so——

Mr. ROBERTS. All right. I suspect we may have a different point of view. I just think there are circumstances where a full, free, uninhibited exchange of candid remarks without the worry that what you say is going to appear the next day in the trade press—I think this would help us make better decisions and try to run the agency more effectively.

Senator HART. All you're doing is restating your position. I'm trying to get a little beneath that, if I may, or behind that. What particular categories of decisions? Decisions involving trade secrets? Of applicant companies?

Mr. ROBERTS. No, I think those—that's proprietary information and I think we can quite properly do that in a closed meeting under the Sunshine Act.

Senator HART. All right. So, other words, the law does permit closed meetings under certain circumstances?

Mr. ROBERTS. Yes, indeed. I think there are 10 different categories—under which one may close.

Senator HART. Now, what categories are not in the law that you think ought to permit you to go behind closed doors?

Mr. ROBERTS. All right. All right. I think the five of us should be able to sit down without the public, without a transcript, and talk about such grandiose things as, what is the direction of this agency? How are we going to face up to the fact that we haven't had a license application since 1978? How are we going to allocate our resources? You're talking about people's jobs. You're talking about the direction of the agency. And I think the five of us ought to be able to sit down and, in my case, figuratively, let our hair down. We can't do that.

Senator HART. Well, I think the reason why you can't is because the Congress has felt all along that those decisions affect the public health and safety and the public has a right to know about those kinds of decisions. As I say, I think the complaint you have is applicable to all democratic institutions. There might be some occasions where it would be nice, as I say, just for the convenience of the Senate, if we could close the doors and kind of yell at each other and talk about where the Senate is going and things like that. The problem is, we're a democratic institution. I think that's the problem we've got here. I can't pin down what it is that you want to do behind those doors that you can't do with the doors open, except maybe worry about some press.

Mr. ROBERTS. Let me give you a not entirely responsive answer, but a comment. The decision that was made was upon the advice of our counsel. We don't think we have done anything that we cannot properly do, and that's upon the advice of our General Counsel.

Senator HART. Let me attack the problem from a different direction. Do you think, in those kinds of sessions which don't fall under any of the 10 categories or however many there are in the law, that you ought to discuss specific applications for license or operations?

Mr. ROBERTS. I would think not.

Senator HART. Should you discuss issues like whether to start TMI?

Mr. ROBERTS. I'm hesitant because I think I cannot talk about TMI.

Senator HART. I said "like" TMI.

Mr. ROBERTS. I understand.

I think there might be certain circumstances, yes. I can't give you a——

Senator HART. Let me give you a hypothetical. Let's say that a hypothetical reactor—there are two units of a hypothetical reactor, one of which has had a severe accident, and the other unit was not permitted to operate. And the decision was being discussed—or the Commissioners wanted to discuss—the question of whether to start

up the second unit, the undamaged second unit. Should that discussion be conducted behind closed doors?

Mr. ROBERTS. I think not.

Senator HART. Would it be?

Mr. ROBERTS. Sir?

Senator HART. Would it be? Who decides what you can talk about when the doors are closed? That's what I'm trying to get at. How's the public going to find out what you've talked about in those meetings?

Mr. ROBERTS. We rely on the advice of our legal counsel for the interpretation of the Sunshine Act and our regulations.

Senator HART. In other words, nothing is going to be discussed in those meetings except in the categories that the law permits; is that correct? You're not going to talk about anything in those meetings that is not set out in the law?

Mr. ROBERTS. It's difficult for me to predict what might happen. Let me say this——

Senator HART. What should happen?

Mr. ROBERTS. What should happen is, we do our jobs and implement our regulations and obey the law. And that's our only intent; certainly, for me.

Senator HART. So you can't envision a closed meeting where anything is being discussed except those areas prescribed in the law for closed meetings?

Mr. ROBERTS. I would say, in general terms, I agree with that. I'm certainly not going to do something if I'm told I'm prohibited by the Sunshine Act from doing it. But if I am advised by our legal counsel that the subject matter is properly closeable, I'm going to be guided by that advice.

Senator HART. Does legal counsel sit in on all those meetings?

Mr. ROBERTS. Well, these so-called meetings—and they've acquired a magical term, "gatherings," I think—one has not occurred.

Senator HART. Well, if one does occur, will the General Counsel sit in and decide whether you're under the law or not?

Mr. ROBERTS. I would suspect that would be the case. We rarely—we never meet without—only in management meetings when we're talking about agency personnel do we meet without legal counsel.

Senator HART. If you were in a meeting of the Commission and a matter came up that was not permitted to be discussed behind closed doors under the law, would you leave? What would be your reaction?

Mr. ROBERTS. Well, if I was so advised that this was beginning to transpire, I would suggest that we not pursue that area.

Senator HART. What if other Commissioners wanted to pursue it? They just didn't want to upset people in the Three Mile Island area or something like that.

Mr. ROBERTS. I don't believe there are any of us who would fly in the face of the advice of our legal counsel.

Senator HART. So I guess we're down to a situation where the Commission seeks to hold meetings behind closed doors or without public participation to discuss a variety of issues, none of which would be other than outside the categories permitted under the law

for the doors to be closed and where, in every case, legal counsel would be there to decide whether the issues under discussion were under the law or not. Is that right?

Mr. ROBERTS. I think that's essentially correct.

Senator HART. I hope we don't hear in a few weeks or months from somebody inside the agency that other kinds of meetings are being held, because I think that would be a very, very serious problem.

Commissioner, on the issue of Three Mile Island—or before we get to that, let me just ask you kind of a basic question. Do you think the Commission should properly consider the financial impact of its decisions on licensing, barring extreme cases where the actions of the Commission are likely to force the bankruptcy of a utility?

Mr. ROBERTS. Well, I think always first and foremost our driving consideration is public health and safety.

Senator HART. But beyond that, what about——

Mr. ROBERTS. Well, we don't live in a vacuum. We do understand that there can be economic implications to what we do. But that's not the driving force.

Senator HART. Should there be a consideration?

Mr. ROBERTS. Depends on the circumstance.

Senator HART. There are circumstances under which the financial impact of a decision on licensing should be taken into consideration?

Mr. ROBERTS. Are you asking that question?

Senator HART. Yes.

Mr. ROBERTS. I think there could be circumstances such as that.

Senator HART. And the Commission, under those circumstances, could and should properly consider the financial impact of its decision as one factor?

Mr. ROBERTS. Back to what I said originally, if all the public interest and public health and safety concerns are satisfied, that could have some influence.

Senator HART. Well, presumably, if an applicant meets all the public health and safety standards, then a license would issue, regardless of the financial impact, I would assume. We're talking about a marginal situation where the question of the financial impact of a negative decision weighs in on the final determination of whether to issue a license or not.

Mr. ROBERTS. The decision—if you're talking about the specific circumstance of the issuance of a license—stands and falls on whether it meets our regulations and our requirements.

Senator HART. I understand that during a meeting of the Commission in 1981 concerning TMI unit 1, the possibility was raised that the licensee might have withheld information from State and Federal agencies regarding the seriousness of the unit 2 accident. You are quoted in the record or in the transcript as saying, "Well, the worst case—suppose they did lie, 3 years ago"—they being the managers, the operators—"what is the relevance of that today?" What did you mean by that?

Mr. ROBERTS. I meant that the faces had changed. I'm not saying they did lie.

Senator HART. Yes.

Mr. ROBERTS. I don't know that.

Senator HART. Yes.

Mr. ROBERTS. It's been debated endlessly.

Senator HART. Yes.

Mr. ROBERTS. If in fact they did, the people today who are charged with the maintenance of the existing facility, the faces have changed. There are different people there today.

Senator HART. Working for the same organization?

Mr. ROBERTS. Well, yes, they've had an organizational change; but yes, essentially, for the same organization.

Senator HART. So the real consideration in terms of the integrity of the operator, and integrity in the narrowest, strictest sense of the word, has to do with individual people and not institutions or organizations?

Mr. ROBERTS. I think there are some elements of both. But I think the management of the company had made a conscious effort to put in place well-trained and knowledgeable people, and I think they demonstrated to us that they are people of integrity.

Senator HART. And that the people who may hypothetically have lied were dismissed?

Mr. ROBERTS. Well, it depends on who you want to think may not have been entirely forthright.

Senator HART. Well, I'm asking—I'm quoting your question to yourself. It would seem to say—that was 3 years ago—"what if they did lie then, is that relevant today?" And I'm asking you to answer your own question. I think your answer is, those people are all gone. I don't know whether that's factually true or not. I know I was lied to when I went up there.

Mr. ROBERTS. Oh, at the site?

Senator HART. At the site. I think.

Mr. ROBERTS. By the utility?

Senator HART. Yes. They said they had the plant under control.

Mr. ROBERTS. When was that?

Senator HART. That was within 36 hours of the emergency.

Mr. ROBERTS. Well, it's not my purpose to get in an argument with you, but don't you think maybe it's possible they did think they had it under control, and it turned out they were wrong? I don't know; I'm theorizing.

Senator HART. Well, let's don't get into that. I have my own ideas about it.

Mr. ROBERTS. All right.

Senator HART. But the question recurs. If the operator had key personnel, personnel of a sufficient status to be communicating with the Commissioners or with the Commission personnel, consciously or purposely misstated the case or misconstrued facts with an intent to mislead, do you think that's relevant 3 years later, 2 years later, 1 year later, 10 years later?

Mr. ROBERTS. If it is a violation of our regulations, and this gets into a subject all of its own, it's appropriate when one considers any sort of enforcement action. If the issue is, does the present group in place have the competence and integrity to operate the plant, I'm not sure it's that relevant.

Senator HART. Well, but what if you didn't have integrity 1 year and you get it 3 years later?

Mr. ROBERTS. But what I was saying earlier, the faces have changed.

Senator HART. OK. So in your judgment, all that needs to be done to, in effect, purge the misbehavior is to change the faces?

Mr. ROBERTS. I'm not sure I'm prepared to——

Senator HART. I'm just quoting back to you the answer you've given me twice. Don't give me an answer and then hedge away from the answer. You've said they've changed their faces.

Mr. ROBERTS. Yes, to my knowledge, they have.

Senator HART. Yes, and that's simply——

Mr. ROBERTS. We have been assured that the new faces are competent and people of integrity.

Senator HART. And that the people who placed them there were in no way involved in the falsification that may have occurred 3 years earlier?

Mr. ROBERTS. I'm not prepared to address whether there was falsification or not.

Senator HART. I'm not asking you that. I'm asking you whether it's relevant.

Mr. ROBERTS. It's relevant for enforcement purposes if, in fact, whoever was in place then violated our regulations. It may not be relevant if the question is some period of time later, if the existing organization has the competency and integrity to operate the plant.

Senator HART. Well, Commissioner, you're going in circles. You didn't have integrity 1 year; how do you get it 3 years later? Do you just judge integrity like a snapshot?

Mr. ROBERTS. Well, who is "they"? Are you speaking of the corporate entity, or are you speaking of the individuals?

Senator HART. I'm quoting you, your question. Suppose they—what was the "they" you were talking about? "Suppose they did lie 3 years ago? What is the relevance of that today?" You tell me who the "they" was.

Mr. ROBERTS. I can't remember what I did 4 years ago, sir. I hear you reading my supposed direct words. I don't even know what meeting you are referring to.

Senator HART. OK. We'll submit that to you.

Let me ask you the question another way. Do you believe that the integrity of a licensee or applicant is or should be a factor properly to be considered by the Commission in making licensing and operation decisions?

Mr. ROBERTS. Yes.

Senator HART. Well, then, in that connection could you explain the statement that you made in November 1983, asking again this question, "Where in the Atomic Energy Act is there a requirement that management or other personnel or firms to which the NRC issues reactor licenses must be found by NRC to be of suitable integrity?" OGC—Office of General Counsel, I presume—responds that "the statute clearly contains such requirement."

Integrity, you see, is very difficult to legislate. And if your standard of integrity for a licensee or an applicant is that "they followed our regulations," presumably, according to the OGC, they could follow the regulations and the statutes and still lie. And you're saying, "Where in the law does it say we have to take that into consideration?"

Mr. ROBERTS. Well, I think our regulations require our licensees to provide certain information, so I respectfully submit that maybe we're mixing up what reporting requirements are with the general concept of what is integrity. We certainly require information, and we fine people, and we do all sorts of things when people don't provide that information or if they provide it falsely.

Senator HART. What if there's information that the Commission doesn't request but that is, nevertheless, known by the applicant or licensee to be relevant to the proper operation of a facility, and that applicant or licensee doesn't provide it to the Commission even though it knows that information to be relevant and important? Would that, do you think, be relevant—that fact be relevant to the Commission?

Well, if I may say so, Commissioner, you're setting the lowest possible standard. All you have to do to get a construction license is to comply with the law and our regulations. Now, let's say you know that welds may not be as good as they ought to be. If the Commission doesn't ask us about that, then we are under no obligation; if the regulations don't require us to provide that information, we're under no obligation to provide that. Is that pretty much your position?

Mr. ROBERTS. Well, I wouldn't cast it as you've said it. If the licensee knows something that is relevant to safety, I think they have an obligation to come forward.

Senator HART. And if they don't, even though that's not strictly part of the regulation of the Commission, should that be taken into consideration in issuance of a license or in any decision of the Commission?

Mr. ROBERTS. It depends on the circumstance. Perhaps. But let me elaborate just to some extent.

I personally have a quandary, a conflict on making the following determination. We rely heavily on information provided by licensees that is voluntarily brought forward. I am concerned about an atmosphere or regime whereby we would be so harsh in our enforcement procedures that we would discourage anything less than forthright sharing of information. That's a delicate balance.

Senator HART. Well, it seems to me, Commissioner, that the public interest ought to require the public servants to require of the people who are seeking a public benefit the highest standard of integrity, and shouldn't shade that standard in order to encourage applicants or licensees to be more forthcoming. That's what the law is for. It says if you don't tell the truth or don't tell all the truth or withhold information, then you're going to be dealt with severely. You're going to have licenses withdrawn or suspended or construction halted, or whatever. That's the only way you can protect the public interest. To say, "we're not going to hold the highest standard of people doing business with the Federal Government because it may discourage them from being cooperative with us" is to set up the lowest standard. And I must tell you, I'm very concerned about these two quotes. "Suppose they did lie 3 years ago; what is the relevance of that today? Where in the act is there a requirement that management must be found by NRC to be of suitable integrity?"

And then finally, in your dissenting view of the Commission's July 1983 statement regarding fines against GPU, the TMI licensee, you say that material false statements were made to the NRC in a 1979 application for a reactor operating license. But then, 2 years later, you voted in favor of permitting the same licensee to operate unit 1. How do you reconcile those two? That's really the issue.

Mr. ROBERTS. Sir, I do not intend to be unresponsive. I am advised I just can't get into matters that relate to TMI-1.

Senator HART. Why is that?

Mr. ROBERTS. It's—a recent order has been stayed by the court, and there are oral arguments scheduled—and it's probable—possible—that it will be remanded to us by the court.

Senator HART. Commissioner, let me ask you a hypothetical once again. If an applicant were licensed—we're speaking only hypothetically here—made material false statements concerning an operating license, what weight, if any, would you give that in deciding whether to issue a permit to the same licensee in the future?

Mr. ROBERTS. Well, hypothetically, theoretically, if in fact the Commission found that a material false statement had been made, we would take enforcement action. I don't think that's in dispute. As to whether a license would be issued at some future date, it would depend on our evaluation of the situation at that time.

Senator HART. In other words, a situation might exist where a licensee had made material false representations and later you or the Commission would later issue to that licensee a permit to operate a nuclear reactor?

Mr. ROBERTS. That's possible. Yes, sir.

Senator HART. Well, I think in light of that, Commissioner, that the Congress and the President ought to seriously rethink the nature of this Commission and the laws that underlie it if we're serious about protecting the public interest. I cannot conceive of a Federal Commission in an area as fraught with peril as this, and where the public health and safety is as paramount, permitting people who mislead the Government and its servants, the protectors of that public interest, continuing to operate those potentially hazardous facilities. But apparently you and I just——

Mr. ROBERTS. Well, I don't want to protract this, believe me, but don't you think it's possible for people and institutions to err and then change their ways?

Senator HART. I certainly hope so. But that's not what business—I mean, we're not in the ministry here. We're not running a church. We're running public health and safety institutions. And all I'm telling you is, as one public servant, if any applicant for a construction or operating permit or license lied to me, that individual—on a material issue, consciously and purposely deceived not me, but the Government of the United States—that person would never get a license of any kind to run a reactor.

Finally, Commissioner, on the Price-Anderson issue, I understand you were asked about it and made a general reference. Could you, just for my information, generally restate your position on Price-Anderson and particularly whether you think the time has come to begin to shift more of the burden of insurance against—or

liability, I should say—more of the burden of liability to the private operator and away from the taxpayers and the Government?

Mr. ROBERTS. Well, let me say this. I think you probably know this, but I'll repeat it.

In 1983, the Commission had a position on Price-Anderson, and at that time I agreed with the position. I have subsequently studied the issue in more detail. Also the horrible accident in Bhopal made at least me, certainly, rethink the circumstances of these possible catastrophic disasters. So I haven't changed my position that Price-Anderson's primary objective is to provide full and timely compensation. I have changed my mind on the method of doing that.

Senator HART. Which is to say?

Mr. ROBERTS. Well, which is to say, the real, primary issue is, is there a cap?

Senator HART. And your answer is?

Mr. ROBERTS. I think there should be. But I think Senators Simpson and McClure have a proposed renewal of Price-Anderson that I think would adequately protect the public.

Senator HART. I'm not sure what you mean by cap.

Mr. ROBERTS. Well, a fixed dollar amount that would be available.

Senator HART. From the public, from the Government?

Mr. ROBERTS. No, no. No, no, no. It's a three-layer thing, and it's a flat so much per reactor, and then there's an intermediate step that has to do with—and then there's a third possible—excuse me. The first level is insurance, then there's so much per reactor per year, and then there's a third layer.

Senator HART. But is there a cap on the overall liability of an operator in the case of an accident?

Mr. ROBERTS. Yes.

Senator HART. Well, I don't understand then how you can have a limit on liability and full compensation if, in fact, the damage done exceeds the cap.

Mr. ROBERTS. Well, of course, the underlying notion is that the total amount available is adequate to deal with what anyone can conceive of that might result from an accident.

Senator HART. So, your cap is the most serious accident that could occur with the maximum damage done by that accident? Why not just take the limit off, because we don't know, do we?

Mr. ROBERTS. Well, no, we don't know with absolute certainty. But I think for these entities to operate they have to have some predictability and some knowledge of what their potential liability is rather than——

Senator HART. So you're not talking full compensation, in other words? You're——

Mr. ROBERTS. Not necessarily.

Senator HART [continuing]. Talking predictability?

Mr. ROBERTS. Sir?

Senator HART. You're talking predictability for the operator and not full compensation for the victim?

Mr. ROBERTS. No, no.

Senator HART. How do you have both? What scheme provides both? What is the total damage that could be done by the worst

reactor accident that could possibly happen? What is the dollar amount of that?

Mr. ROBERTS. Well, it's an educated guess, obviously, but I think——

Senator HART. What is that guess?

Mr. ROBERTS. Some people say $2 billion.

Senator HART. $2 billion?

Mr. ROBERTS. Yes, sir.

Senator HART. Is that the maximum amount of damage that could have occurred if the TMI reactor had gotten through the containment and radiation had gotten into the atmosphere and been driven eastward to New York or southeastward toward Washington?

Mr. ROBERTS. I'm not prepared—I don't know the answer.

Senator HART. Well, where did the $2 billion come from?

Mr. ROBERTS. I'm not sure I know. I'll have to——

Senator HART. So, to restate your position, you are for full compensation, but predictability for the operator? And therefore, the way you reconcile those is a composite of public and private insurance not to exceed $2 billion per accident?

Mr. ROBERTS. That is a scheme that has been proposed that seems reasonable to me.

Senator HART. One final question, Commissioner, back on the question of integrity of operators. Do you know as a fact whether either GPU or Mid-Ed ever took any action against any of its employees who allegedly lied to the NRC?

Mr. ROBERTS. I don't know that.

Senator HART. I'm sorry?

Mr. ROBERTS. I don't know that. I do not know.

Senator HART. You suggested earlier that you did, in the sense that you said that "faces had changed." In other words, people had come and gone, but they weren't replaced because they lied.

Mr. ROBERTS. Let me answer you in a circuitous manner. It is my understanding that the utility has endeavored to remove from the prospective operation of unit 1 anyone who might have any involvement with alleged wrongdoings at unit 2.

Senator HART. But they may still be on the payrolls, making decisions somewhere?

Mr. ROBERTS. I can't answer that. I don't know. That's a fairly big organization; they have other types of plants. I don't know that.

Senator HART. Would it matter to you, in a hypothetical situation, if a company seeking a permit or license had employees who had lied to the Commission, that in fact they had not dismissed those employees?

Mr. ROBERTS. That's possible, but I'd have to see the particulars of the circumstance.

Senator HART. Well, it's a very interesting, existential ethical standard you have, Commissioner, on these issues.

I guess there are no other Senators to ask questions, and so we will consider the hearing adjourned.

Mr. ROBERTS. Thank you, sir.

[Whereupon, at 3:29 p.m., the committee recessed, to reconvene at the call of the Chair.]

[Response from Mr. Roberts to a committee questionnaire, a memorandum from the general counsel, Nuclear Regulatory Agency, responses to additional questions, and a statement from the Union of Concerned Scientists follow:]

# UNITED STATES SENATE

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

# INFORMATION

## REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement For Completion By Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and twenty-five (25) copies of the requested information should be made available to Honorable Robert T. Stafford, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Staff Director) as soon as possible.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

**Name:** ROBERTS (Last) THOMAS (First) MORGAN (Middle)

**Position to which nominated:** Commissioner, U.S. Nuclear Regulatory Commission **Date of Nomination:** June 7, 1985

**Date of birth:** 14 April 1937 (Day) (Month) (Year) **Place of birth:** Memphis, Tennessee

**Marital status:** Married **Full name of spouse:** Margaret Elizabeth Boyle Roberts

**Name and ages of children:**

| | |
|---|---|
| Andre Lovell Roberts | 15 |
| Elizabeth Boyle Roberts | 8 |
| Elinor Edgeworth Roberts | 5 |

**Education:**

| Institution | Dates attended | Degrees received | Dates of degrees |
|---|---|---|---|
| Georgia Institute of Technology | 1955-1959 | B.S. | June 1959 |
| | | | |
| | | | |
| | | | |
| | | | |

**Employment record:** List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

6/59-7/62 U.S. Navy: Officer

7/62-12/69 Southern Boiler & Tank Works, Inc, Memphis, TN: Sales Engineer

12/69-12/78 " " " " " : Chairman, President

1/79-7/80 George Bush for President, Houston, TX: Treasurer

7/80-8/81 Self Employed, Washington, DC

8/81-Present U.S. Nuclear Regulatory Commission, Washington, DC: Commissioner

Employment record—Continued

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Armed Forces Reserve Medal

National Defense Medal

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

| Organization | Office held (if any) | Dates |
|---|---|---|
| Memphis Orchestral Society | Director, President | 1968-1978 |
| Arts Appreciation Foundation | Director | 1975-1978 |
| Metropolitan Opera Mid-South Regional Auditions | Director | 1971-1978 |
| James Smithson Society | Member | 1979-Present |
| Friends of Music: Smithsonian | Steering Committee | 1980-Present |
| Washington Opera | Trustee, V.P. | 1980-Present |
| Garth Newell Music Foundation Inc. | Trustee | 1984-Present |

**Qualifications:** **State fully your qualifications to serve in the position to which you have been named.**

For sixteen years I was in the custom steel plate fabrication business and built components for nuclear submarines and commercial nuclear power plants under the aegis of the old AEC and then the NRC.

**Future employment relationships:**

1. **Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.**

I am presently a Commissioner at the NRC.

2. **As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.**

No

3. **Has anybody made a commitment to you for a job after you leave government?**

No

4. **(a) If you have been appointed for a fixed term, do you expect to serve the full term?**

Yes

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

Nothing other than that disclosed on SF-278

3. Are any assets pledged? (Add schedule).

No

4. Are you cur[illegible] party to any legal action?

No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

Yes Nothing

**Potential conflicts of interest:**

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None to my knowledge

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

Provide full information

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

See attached memorandum of June 13, 1985, from the NRC General Counsel to me.

Political affiliation and activities:

List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

Republic National Committee

George Bush for President

Fund for America's Future

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

Miscellaneous speeches since serving as a Commissioner

(August 1981 to present)

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

Thomas M. Roberts being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Thomas M. Roberts

Subscribed and sworn before me this 13th day of July, 1985.

Elizabeth Ann Tipton
Notary Public

My Commission expires: 2/1/86

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 13, 1985

MEMORANDUM FOR: Commissioner Roberts

FROM: H.E.P. Herzel H.E. Plaine
General Counsel

SUBJECT: CONFLICT OF INTEREST LAWS AND REGULATIONS

Over the past four years as an NRC Commissioner you have been subject to the restrictions of the Ethics in Government Act of 1978, as amended, as well as the pertinent provisions of NRC regulations governing conflict of interest matters, 10 CFR Part 0. You have submitted a Form 278 on an annual basis detailing your financial holdings and those of your immediate family that has been reviewed by the Designated Ethics Officer for compliance with the reporting requirements of the Ethics in Government Act. In addition you have supplied annual certifications that you and your immediate family own no security or other interest in those entities set forth on the NRC's "List of Prohibited Securities," 10 CFR § 0.735-29. Should you serve an additional term, similar submittals will be required to continue compliance with the Ethics in Government Act and NRC regulations.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
COMMISSIONER

June 21, 1985

The Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are my responses to questions you requested me to answer for the record as part of your consideration of my nomination by the President to be a member of the United States Nuclear Regulatory Commission.

Sincerely,

Thomas M. Roberts

Enclosure:
As stated

cc: The Honorable Lloyd Bentsen

9 O—85——2

Senator Robert T. Stafford

Q.1 If you believed that an applicant for a license to operate a nuclear power plant had satisfied all the Commission's technical requirements, such that you believed there was reasonable assurance that the plant could operate safely, but had not satisfied all the legal or procedural requirements, would you vote to grant the license?

A.1 Whether I would vote to grant the license would depend on whether the "legal or procedural" requirement is imposed by statute or by Commission regulation from which an exemption might be justified. If the requirement is imposed by statute, I would not vote to make the license effective until the statutory requirement had been satisfied. My recent vote not to make effective the decision of the Licensing Board authorizing full-power operation in the Limerick case was based on my understanding that a statutory procedural requirement had not been satisfied. However, if the requirement is one imposed by regulation but not by statute, I would vote to grant the license if an exemption from the regulatory procedural requirement was warranted.

Q.2 Have you ever voted to allow the operation of a facility that you did not believe met the requirement that there be reasonable assurance that the facility could be operated safely?

A.2 No. I believe that safety has to be our primary concern. The public has the right to demand -- and the NRC the obligation to assure -- that these plants are safe.

Q.3 Do you believe that state or local governments should be allowed to veto construction or operation of a nuclear power plant?

A.3 I understand that the Supreme Court has held that authority over the health and safety aspects of nuclear power has been preempted by the federal government but that state and local governments retain their traditional authority over economic and other aspects. Therefore, a state or local government may, for stated reasons other than protection of public health and safety, by withholding necessary permissions over which it has exclusive control, block construction or operation of a nuclear plant. However, I do not believe that a state or local government, by objecting to construction or operation for safety reasons, should be able to veto issuance of a construction permit or operating license by the NRC where the NRC has found that the health and safety of the public will be adequately protected.

Q.4 Do you believe that any of the Commission's backfitting requirements have been unnecessary? If so, please give specific examples.

A.4. One of the difficulties with the Commission's backfitting process is that there has not been a systematic, documented approach in dealing with such issues. The lack of records makes it difficult to point to specific backfitting requirements which may have been unnecessary. Nevertheless, there is a recent report by a senior member of the NRC staff which suggests that indeed that may be the case. This report was submitted by James R. Tourtellotte, Chairman, Regulatory Reform Task Force on March 11, 1985 to the Honorable Carlos J. Moorhead, ranking minority member, Subcommittee on Energy, Conservation and Power, and the Honorable James T. Broyhill, ranking minority member, Committee on Energy and Commerce of the United States House of Representatives. This document is entitled "Report on Backfitting and Licensing Practices at the U.S. Nuclear Regulatory Commission". The report cites several examples of problems relating to both backfitting and licensing practices.

Q.5 Do you believe that the licensing process is responsible for delays in operation? If so, please give specific examples.

A.5 Because it takes on the average approximately twice as long to license a nuclear power plant in the United States as in other countries, I have a sense that the licensing process has probably contributed to delays in plant operations in some instances. However, since there may be a myriad of reasons for delay, it is impossible to break out specific examples where the licensing process was the sole factor. I do believe our licensing process can be improved to achieve better efficiency, predictability and credibility. Thus, I support the "Nuclear Power Plant Licensing and Standardization Act of 1985."

Q.6 What type of statement (i.e., oral or written, omission or affirmative, negligent or intentional, etc.) do you believe should constitute a material false statement under section 186 of the Atomic Energy Act?

A.6 My reading of Sections 182 and 186 of the Atomic Energy Act leads me to believe that only materially false statements in an application or in a statement of fact required under Section 182 should constitute a material false statement under Section 186. Applications and statements of fact required under Section 182 are required by Section 182 to be written and submitted under oath or affirmation. When an omission, knowingly made with an intent to deceive or with careless disregard for its completeness or accuracy renders a statement in the application or a written statement required under Section 182 materially false, I believe it should be considered to constitute a material false statement.

Q.7 Do you believe that public participation in the NRC's decision-making process is worthwhile?

A. 7 I support meaningful and practical public involvement in our regulatory proceedings. I believe there should be a reasonable opportunity for participation in the licensing process at the earliest practical opportunity and certainly when information could be relevant to the adequacy of the site and the facility design. This participation should not, however, permit a party to the proceedings to use the process to delay or obstruct reaching a decision. Commission regulations require that a public hearing on each application for a major nuclear facility construction permit be conducted by an Atomic Safety and Licensing Board and interested persons or groups are invited to participate at the hearings. To facilitate public participation, licensing board hearings, with rare exceptions, are held in communities near each proposed facility site. The NRC has also promoted public observation and participation in the early non-adjudicatory stages of the licensing process through meetings held near the proposed facility site. In addition, the NRC has sought practical ways to involve the public informally in its deliberations through such activities as public conferences, workshops, and regional meetings on important policy issues. NRC rules 10 CFR part 60, Subpart C, provide for participation by state governments and Indian tribes in decisions regarding disposal of high-level radioactive wastes in geologic repositories. Specifically, NRC staff is available to consult with representatives of State, Indian tribal and local governments about DOE's site characterization activities, to cooperate with States and Indian tribes that are potentially affected by geologic repository operations, and to develop

proposals for their participation in the review of site characterization reports and DOE repository license applications.

Q.8 Has the ex parte rule prevented you from carrying out any of your responsibilities? If so, please give examples, and state whether this is due to the NRC rule, the Administrative Procedure Act, or both.

A.8 Although I do not believe that the ex parte rule has prevented me from carrying out any of my responsibilities, it has prevented me from communication with those on our regulatory staff who are most knowledgeable about the plants being considered for licenses on any issue in controversy in a licensing proceeding. So long as we interpret the Atomic Energy Act as requiring our hearings to be "on the record" and the investigating and prosecuting functions to encompass advocacy by our regulatory staff of positions in licensing proceedings, both the APA and our regulations will prevent communications on contested matters between us and pertinent NRC staff until agency action on those matters is final.

Q.9 You originally supported the NRC's "Nuclear Power Plant Licensing and Reform Act of 1983." You now support the NRC's "Nuclear Power Plant Licensing and Standardization Act of 1985", which differs from the previous NRC bill. Please explain the reasons for your change in position.

A.9 I agreed with the majority of my fellow Commissioners that the new proposed legislation is an improvement over the 1983 version. The current proposal focuses on standardization, early site review, and a combined construction permit/operating license. The new bill omits the controversial changes to Section 189 of the Atomic Energy Act which appeared in the previous bill. In addition, the new bill is stated more succinctly and is generally improved from a drafting standpoint.

Q.10 Presently, the Commissioners participate in the licensing process through normal internal appellate reviews and immediate effectiveness reviews. In your opinion, should the Commissioners continue to participate in the licensing process in this matter?

A.10 Although I believe that the Commission should continue to exercise its discretion regarding appellate review of the decisions of its lower tribunals, I believe that it should abolish the immediate effectiveness review procedure for operating licenses that is now embodied in 10 CFR 2.764(f)(2). Retention of that procedure is not necessary to the Commission's exercising substantial control over both its adjudicatory proceedings and the issuance of operating licenses. Moreover, it has the potential to thoroughly confuse members of the public not familiar with agency practices.

Q.11 Do you think that the NRC should continue to be headed by a five-member Commission?

A.11 No. My experience as an NRC Commissioner has led me to support converting the five-member Commission to a single administrator. I believe that the benefits of having five persons of different backgrounds bring their different experiences to our decision-making process is outweighed by the Commission's inability to make the collegial approach to decision-making work. I also believe that the Commission's inability to act decisively may stem partly from the NRC's lack of a well defined mandate beyond the vague one of protecting the public health and safety. This vagueness frees individual Commissioners to interpret what this general mandate means in operational terms, with the potential of Commissioners working at cross-purposes from each other. Thus, I believe Congressional action is needed whether in support of restructuring the NRC or in providing more specific functional guidance vis-a-vis our mandate.

Q.12 In order of importance, what economic, technological, or regulatory changes are necessary before there will be another application for a construction permit for a nuclear plant?

Q.12 I cannot say with any degree of certainty which of the factors mentioned will be most important in making a decision to file another application for construction of a nuclear power plant. The importance of those items and their relation to the ultimate decision will be dependent upon their importance in the time and circumstances surrounding the decision to file an application. Some factors which I believe will be important are as follows: Economically, reserve margins of utilities would need to be reduced to a low enough level that a genuine need for additional capacity is demonstrated. In addition, interest rates, projected rates of inflation, construction costs and cost of production for competing energy sources such as coal power plants will all be considerations. Technologically, improved design, efficient construction management and experienced operational capability would be very beneficial. In addition, the industry should take advantage of the data base generated thus far and take advantage of the lessons learned to give greater stability to the technology. Such a review and application of principles learned should make a significant contribution to a program of standardization. The regulatory changes necessary to set the stage for the filing of new applications should be directed toward improving agency management and the stability of the licensing process.

Q.13 In testimony given during your previous confirmation, you stated that it would be improper if a top Administration official encouraged you to proceed more quickly with the licensing of a nuclear power plant. Have you ever been encouraged in this manner?

A. 13 No, I have never been approached by an Administration official to encourage me to proceed more quickly with the licensing of a nuclear power plant. However, I would be less than candid if I said that I was not aware of the Administration position vis-a-vis nuclear power as stated through speeches, interviews and general statements. This personal awareness has not influenced me in independently discharging my responsibilities.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 21, 1985

The Honorable Gary Hart
Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Senator Hart:

Enclosed are my responses to questions you requested me to answer for the record as part of your consideration of my nomination by the President to be a member of the United States Nuclear Regulatory Commission.

Sincerely,

Thomas M. Roberts

Enclosure:
As stated

cc: The Honorable Lloyd Bentsen

Senator Gary Hart

SUNSHINE ACT

Q.1 Commissioner Roberts, could you explain for us your understanding of the purpose of the Sunshine Act?

A.1 My understanding is that the purpose of "The Government in the Sunshine Act" is to require conduct of agency business by federal government agencies headed by a collegial body composed of two or more individuals, a majority of whom are appointed by the President with the advice and consent of the Senate, and by subdivisions of such agencies authorized to act on behalf of the agency, in meetings that are open to the public, except where the agency properly determines that in accordance with specific exemptions a meeting or portion of a meeting should be closed to the public.

Q.2 Do you believe that the Commission's recent approval of a modification of the term "meeting" is consistent with these purposes?

A.2 Yes, or I would not have voted for the modification. Moreover, the modification was made on the advice and recommendation of our General Counsel.

Q.3 Do you believe making these changes effective immediately, before the public has had an opportunity to comment on the change is either good policy or consistent with the spirit of the Sunshine Act?

A.3 Because redefining the term "meeting", to correspond with the interpretation of the term in the Sunshine Act as made by the Supreme Court of the United States in a 9-0 decision, might improve collegiality and consequently our ability to effectively carry out our responsibilities as Commissioners, I believe making the changes effective as soon as legally possible was the right thing to do.

Q.4 While the NRC's changes in its Sunshine Act regulations may be entirely legal, in light of concerns that the Commission has failed to conduct its business in an open and balanced manner, do you believe narrowing the application of the Sunshine Act will engender public trust in the Agency? Isn't it more likely that the changes made by the Commission and the procedure employed will in fact increase the public's distrust of the Commission?

A.4 I doubt that these changes alone are likely to alter one way or the other the public's present view of the Commission.

Q.5 Is there any compelling reason why these changes in NRC's Sunshine Act regulations should be made at this time? Is added convenience for the Commissioners adequate justification for jeopardizing what public trust the Commission has been able to garner over the years?

A.5 In my view the changes were properly made. As I indicated above, I doubt that these changes are likely to have any significant impact on the public's view of the Commission.

THREE MILE ISLAND

Q.1 Commissioner Roberts, do you believe the Commission should properly consider the financial impact of its decisions on licenses or applicants, barring extreme cases where NRC action would be likely to force the bankruptcy of a utility?

Could you explain why you raised questions about whether TMI Unit 1 would be in the rate base during maintenance? Is it the Commission's concern whether a facility is in a utility's rate base? Shouldn't safety be the Commission's only proper concern?

A.1 The discussion to which the question apparently refers is one that took place in a closed meeting in the TMI-1 Restart Proceeding on December 1, 1982. The Commission was discussing its legal obligation to lift the effectiveness of its shutdown order when the concerns that originally justified the order were satisfactorily resolved. The plant would have remained shutdown because the steam generator repairs had not been completed even if the Commission were to have lifted the effectiveness of its shutdown order. Our Deputy General Counsel had just indicated that in these circumstances it really did not injure the licensee to leave the shutdown order in effect. I asked the question to elicit further assurance that we would not unlawfully be injuring the licensee if we did not lift the effectiveness of the shutdown order although the plant would remain shutdown until steam generator repairs were completed. The shutdown order would not have been lifted in any event until the safety concerns that justified imposing it were resolved, regardless of the financial injury to the licensee and its ratepayers and stockholders. In this

context, I believe that consideration of the possible financial impact of our decision on the licensee was proper and that not to have considered the possible financial impact would have been improper.

TMI-1

Q.2 Could you explain the following comments you made during a 1981 Commission meeting concerning TMI and the possibility that the licensee withheld information from the State and Federal officials regarding the seriousness of the TMI-2 accident?

> Commissioner Roberts: "Well, the worst case. Suppose they did lie three years ago. What is the relevance of that today? I am not prepared to say they did lie. I am just making a supposition."
>
> (December 9, 1981
> Transcript, p. 57)

A.2 The comments were made during a discussion with Commissioner Gilinsky about why it apparently was important to him to have the Commission meet with Mr. Stello of the NRC Staff to get his views on whether the licensee had lied and what the Staff's thoughts were on the matter. I was trying to understand his reasons for believing that such a meeting was important and to obtain his views on the relevance to a decision on restart of TMI-1 of the licensee's possibly having lied three years ago about the accident at TMI-2.

TMI-1

Q.3 Do you believe the integrity of a licensee or applicant is a factor properly to be considered by the Commission in making decisions?

Could you explain the following comment you made in November, 1983:

> "Where in the Atomic Energy Act is there a requirement that management or other personnel or firms to which the NRC issues reactor licenses must be persons found by NRC to be of suitable integrity?" (OGC (Office of General Counsel) responds that the statute clearly contains such a requirement.)

[Note: November 8, 1983, (Tran. pp. 15-16) In a Commission discussion of the criminal indictment against Met Ed for falsification of leak rate date, the Office of General Counsel says that Roberts had asked them this question.]

A.3 Yes, where a serious question has been raised about whether a licensee or an applicant is of suitable integrity to operate a plant in conformity with its license and the Commission's regulations, I believe the integrity of a licensee or an applicant is a factor to be considered by the Commission in making licensing decisions. The cited "comment" was one of several questions posed by me to the Office of the General Counsel in connection with my consideration of the restart of TMI-1. However, the sentence in parentheses following my question to OGC incorrectly indicates that OGC responded that the statute clearly contains such a requirement. OGC in its response to those questions in a memorandum entitled "Licensing Requirements for NRC Findings on "Integrity at

TMI-1" and dated November 16, 1983 indicated that although the statute authorizes consideration of an applicant's or a licensee's integrity it does not require its consideration.

TMI-1

Q.4 In your dissenting views of the Commission's July, 1983 statement regarding fines against GPU, the TMI licensee, you stated: "I agree that material false statements were made to the NRC in a 1979 application for a senior reactor operating license." Two years later, you voted in favor of permitting the same licensee to operate Unit 1.

Do you believe that licensees making material false statements should properly be entrusted with an NRC operating license?

A.4 Whether a licensee who has made material false statements to the Commission should be entrusted with an NRC operating license depends on the circumstances. If as in the case involving TMI-1 the licensee has made personnel and procedural changes sufficient to enable the Commission to find reasonable assurance that the plant will be operated safely, I believe that the licensee properly can be entrusted with a license. Each case must be judged on its merits. The Atomic Energy Act does not say that licenses shall be revoked or denied to applicants or licensees who make material false statements. It says they may be revoked.

## SOURCE TERM

Q.1 Both the American Physical Society and the American Nuclear Society recently completed work on "source term" calculations, that is, the amount and composition of the radioactive release from a hypothetical nuclear accident. What is your opinion of this research?

A.1 At this time, research indicates that some of the plants, PWRs with large dry containments, are likely to release small fractions of the source terms previously estimated. Other plants have not been scrutinized in as much detail and should be further examined.

SOURCE TERM

Q.2 If the source term research withstands peer and staff review, what applications would this research have?

A.2 There has been a significant large scale effort which has enjoyed the benefit of a great deal of cooperation and information exchange during the research. The work has been reviewed by knowledgeable engineers and scientists. Additionally, the NRC staff has sought an independent review of the methodology and analysis from the American Physical Society.

Since there still appear to be differing opinions as to the appropriateness of the methodology used in the research efforts, over the next two to three years the NRC expects to review all source term regulations for the need to change them. Most significant of these are the reactor siting and emergency planning rules, containment performance, equipment design and performance, and equipment qualification regulations.

Q.3 The recent source term research may lead some to the conclusion that the releases may be less threatening to the public health and safety than previously believed. Since the source term is a key component of mitigation strategies, such as evacuation planning, do you believe this research should cause the NRC to reconsider such strategies, including review of emergency planning zones?

If yes, do you believe review of emergency planning zones should occur simultaneously with the Commission's consideration of source term or should the source term issue be decided first?

A.3 This research may provide insights to allow the NRC to better review emergency response strategies. There are some indications that in general the most effective strategy for protection of public health and safety would be to seek shelter. The current strategy would more often lead to evacuation and therefore could increase the exposure of the public and emergency response teams. Recent research indicates that containment failure, if it occurs, will be later in any accident sequence than previously thought and therefore there would probably be time to shelter people.

The staff has been directed to conduct a review of the affected regulations and to bring to the Commission any proposed revisions to the regulations that are technically warranted based on the best information available. The staff is also to identify any added research needed to bring the source term work to completion in all plants.

The source term results can be applied once we have completed the research. For the classes of plants where the work is not complete, the source term research should continue until the Commission is satisfied that it has technically sound and well-founded data on which to make plant specific decisions. I would prefer to wait until there is extensive review and peer analysis of the source term work before applying the source term research findings to reviewing emergency planning zone regulations.

Senator Gary Hart

PRICE-ANDERSON

Q.1 Commissioner Roberts, you recently changed your position regarding reauthorization of the Price-Anderson Act. Could you explain to the Committee why the position you and a majority of your colleagues endorsed 18 months ago is now unsatisfactory?

A.1 The essential point involved in all of the Price-Anderson extension questions is whether public utilities operating nuclear power plants should be subject to unlimited liability in the unlikely event of a nuclear accident which causes injury to the public. I fully support the extension of Price-Anderson with provisions that provide the best system to compensate members of the public for economic losses caused by a nuclear power accident. My judgment at the time of the Commission's December 1983 report was that an annual cap on the limit of liability deserved further consideration, but since it was only one of several recommendations made in the report, on balance I decided to vote for it fully expecting extensive public debate on the report. Subsequently, views expressed in Congressional hearings and in public fora raised significant questions concerning the feasibility of the unlimited liability subject to an annual cap approach. Significant questions have emerged on whether unlimited liability spread over an unlimited period of time would provide a system for full and timely compensation. In addition, it is not easy to explain why consumers in certain regions of the country should be compelled to pay for prolonged periods of time for the consequences of a catastrophic accident for which they have no responsibility.

I am not aware that any legislation has been introduced to implement the Commission's 1983 recommendation. However, S.1225 was introduced on May 24, 1985. Its comprehensive analysis helped persuade me that its objectives and methods offer much to assure timely and full public compensation through the extension of the Price-Anderson system. My views on the subject are essentially in accord with S.1225. Basically, it would achieve the objectives of the December 1983 Commission recommendation without, as subsequent experience has shown, the negative points associated with that recommendation.

Q.2 What facts have changed in the last 18 months that would cause you to not only reconsider this issue but to change your position so dramatically?

A.2 The establishment of a system whereby contributions to the compensation fund are made over an indefinite period of years appears incompatible with assuring that an adequate fund is available to make timely compensation payments. Unlimited liability, coupled with waiver of defenses and an extended statute of limitation could encourage future litigation or threats of litigation in usage of the fund to reach what may be unjustified settlements long after an alleged nuclear accident. I do not believe that unlimited liability will necessarily provide any better assurance that injured members of the public will receive timely and full compensation and, to me, that objective is paramount.

Q.3 Did you or members of your staff initiate reconsideration of the Commission's position on Price-Anderson? For what reasons?

A.3 No, neither I nor a member of my staff initiated reconsideration of the Commission's position on Price-Anderson. While I was rethinking my personal position, however, a member of my staff met on March 26, 1985, with representatives of the American Nuclear Insurers and distributed to other offices a report they provided my office. This was done not to initiate any reconsideration but, in the spirit of collegiality, to share the information. On May 23, 1985, I circulated a memo giving my comments on the proposed testimony for the House Interior Committee hearing on Price-Anderson. As stated in my memorandum, discussions with other Commissioner's offices as well as public statements by Commissioners led me to believe that the testimony as written did not represent the position of a majority of the Commission. My memorandum concludes by stating:

"For the foregoing reasons, I believe the draft testimony should be revised to (1) affirm a continuing commitment to the objective embodied in the 1983 NRC Report; (2) present a more balanced discussion of the criticism of the Commission's approach to the limitation on the liability; and (3) indicate whether the Commission's objective may be equally or better served by one of the other proposals." (See attached.)

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
COMMISSIONER

May 23, 1985

COMTR-85-6

MEMORANDUM FOR: Chairman Palladino
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

FROM: Thomas M. Roberts

SUBJECT: COMMENTS ON PROPOSED TESTIMONY FOR UDALL SUBCOMMITTEE HEARING ON PRICE ANDERSON

The draft testimony does not represent my position on Price Anderson and, based on discussions with several of the other Commissioners' offices it may not represent the position of a majority of the Commission. I believe it needs to be substantially rewritten. Below are several of the problems I see.

The objective of the Commission's report and recommendations was to modify Price Anderson in such a fashion to assure that it would continue to provide members of the public who might be injured in a nuclear power accident with an assured and adequate system of compensation. Events following on the Bpohal incident underscore the desirability of of having such a system in place. This is an objective to which I remain committed. However, I never viewed the Commission's approach as the only way to accomplish this objective. Since the Commission's report was submitted to Congress in 1983, several different approaches have been considered and last year a comprehensive record was established before the Udall Subcommittee. In particular, I understand that Senators Simpson and McClure will soon be introducing a bill that contains many positive features which I view as possibly representing an acceptable alternative way of accomplishing the objective embodied in the Commission report. I believe the draft testimony should be revised to reflect this position on the assumption that it will be introduced by the time of the Udall hearing.

Beginning on page 5, the draft addresses the principal objections which it is believed have been made to the recommendation that the absolute limit on liability be eliminated in favor of annual assessments until all public claims are paid. However, the draft fails to address at all what I understand is a central problem that has been identified, that is, that the removal of the absolute limit destroys the "omnibus" feature of Price Anderson and thus

exposes not only utilities to unlimited liability, but also the others (vendors, A.E.'s, etc.). The deficiency in not addressing this central issue is compounded by the discussion on page 10 of the Seiberling bill, and the NRC proposal.

At page 10, the draft states, "HR 665, introduced by Congressman Seiberling, would (1) eliminate the limitation on liability provision... [while] in the 1983 study the Commission did not favor eliminating the liability limit." These contrasting statements are silent on the fact that removal of the prsent absolute limitation has the same legal consequences as the Seiberling bill, the only difference being that the Seiberling bill does not indicate how such unlimited liability would be funded, while the NRC proposal establishes such a funding mechanism. It is my understanding that under either approach, particularly since the NRC proposal would not necessarily provide timely compensation, claims could be made against the assets not only of a utility, but the others who might also be involved.

I am also concerned over the adequacy of the analysis in the draft of the utilities ability to pay successive assessments. The draft concludes on page 7 that " such annual assessment would not place unusual financial stress on most licensees." However, the caveats thereafter stated in the new [underlined] language on pages 7 and 8 tend to cast doubt on that conclusion. Specifically, I am concerned that this discussion glosses over the real magnitude of the uncertainty that the annual assessments would actually be collectable in a post accident situation. I would feel more comfortable if we had a more comprehensive understanding of the financial impact of the Commission proposal, including some more in-depth survey of the ratemaking treatment that might be afforded such assessments.

For the foregoing reasons, I believe the draft testimony should be revised to (1) affirm a continuing commitment to the objective embodied in the 1983 NRC Report, (2) present a more balanced discussion of the criticism of the Commission's approach to the limitation on the liability, and (3) indicate whether the Commission's objective may be equally or better served by one of the other proposals.

SECY please track.

cc: OCA

Senator Hart

Q.4 Why did you suggest a change in response to House Interior Committee questions and not suggest a similar change in response to budget questions on Price-Anderson that were also submitted to the Commission this spring?

A.4 As stated in my answer to Question 1, my judgment at the time of the Commission's December 1983 report was that an annual cap on the limit of liability deserved further consideration. I continued to study the issue. However, my position did not crystalize until late in May 1985. This is why I suggested changes to the responses to the House Interior Committee questions and not to the earlier ones submitted during the budget cycle.

Q.5 Could you explain why you adhered to the policy recommendations set forth in NUREG-0957 in answering budget questions several months ago, but you decided to recant in responding to Congressman Seiberling's questions on the same topic?

A.5 As stated in the answer to Question 4, my position did not crystalize until after the budget questions were submitted. Fundamental to rethinking my position was a subsequent staff analysis of the report, dated April 22, 1985, and the statement of Senator Simpson in introducing S.1225.

Q.6 Do you believe in full compensation for victims of a significant nuclear occurrence? If not, why not? If yes, please explain how you believe such compensation should be provided.

A.6 Yes, for their economic losses. I believe that the objective of full and timely compensation to injured members of the public would be better served by an approach along the following lines: Assure that a sizable compensation fund with a limitation of liability is available in a timely manner and raise the amount of the retrospective payment. I have no fixed view on the source of the remainder of the contributions, although a mills-per-kilowatt assessment on nuclear plants is one alternative. The mills-per-kilowatt assessment is worthwhile because, as with the NRC proposal, utilities with greater nuclear power generation would be assessed more in fees than those with less nuclear power generation; provisions can be made to adjust the assessment up or down, depending on funding needs to satisfy claims; and there is experience with this system through the Waste Management Fund which appears to be operating smoothly.

Provision also could be made for the fund to increase at appropriate intervals to accommodate any significant increases in the rate of inflation. In my judgment, the probability of an accident which would exhaust such a fund is highly unlikely. However, since such possibility cannot be ruled out with absolute certainty, I believe that the legislation should include an appropriate mechanism for Congressional consideration of the appropriate action to be taken, considering all elevant circumstances, in the event a catastrophic accident does, in fact, occur and there is reason to believe that the available fund is not adequate to provide full and timely compensation.

Q.7 What criteria should Congress consider in framing nuclear liability insurance legislation? In what way does the Commission's annual limitation on liability fail to meet these criteria? What alternative would you propose?

A.7 I believe that the goal of Congress should be to assure full and timely compensation for all damages caused by an accident at a licensed nuclear reactor. If an accident causes public liability claims beyond the amount available in the fund, a mechanism should be in place to provide appropriate compensation. S.1225 has such a mechanism. As stated before the House Interior Committee on June 4, 1985, I believe the public would be better served by an approach along the following lines:

Assure that a sizable compensation fund with a limitation of liability is available in a timely manner. Available insurance and retrospective payments would certainly continue to be major contributors to the fund. I have no fixed view on the source of the remainder of the contributions, although a mills-per-kilowatt assessment on nuclear plants is one alternative. Provision also could be made for the fund to increase at appropriate intervals to accommodate any significant increases in the rate of inflation. I also believe that the legislation should include an appropriate mechanism for Federal Government consideration of the appropriate action to be taken considering all relevant circumstances in the event a catastrophic accident does, in fact, occur and there is reason to believe that the available fund is not adequate to provide full and timely compensation.

Q.8. If less than full compensation is provided to victims, some of the funds available under Price-Anderson would need to be set aside immediately in order to provide compensation for victims who eventually develop cancer--a disease commonly believed to result from exposure to radiation. How would you decide to set aside these funds? Wouldn't this set-aside reduce the amount of money available in the first year to compensate victims? Wouldn't the Commission's $10 million annual limit therefore make more funds available to victims in the first few years than the scheme you now endorse?

A.8 The questions of who would decide to set aside funds and of how to compensate victims who develop cancer are handled by the Federal District Court as the Act now provides. This would be preserved by S.1225. It may be necessary for the Congress to reserve a portion of the compensation fund as a contingency for future claims which arise a decade or more after such an accident. By including a mandate for Congressional action in the event that the fund is exhausted, full compensation even in this extreme instance is assured. Such compensation can be legislated by Congress to be one of many schemes; e.g., having all nuclear power generators pay a one-time fee, allocating the cost of the compensation fund among reactors or having the utility deemed responsible pay part of all of the cost of the compensation fund.

Q.9 One key component of effective nuclear liability insurance legislation is certainty. We need to put in place a fairly simple and certain compensation system before an accident occurs. In your opinion, how could this best be achieved?

A.9 While I continue to support all but one of the original recommendations in the NRC Price-Anderson report (NUREG-9507), I am not now personally confident that the unlimited liability recommendation, even with an annual cap, is the best approach. Since that report was submitted to Congress in 1983, there has been a great deal of attention given to the nuclear liability issue. There are several bills pending before the Congress to extend Price-Anderson and to modify it in one respect or another; none covers the recommendation made by the NRC. Moreover, during this period we have seen much activity relating to the public liability issues involving asbestos-induced injuries, toxic wastes--and unfortunately there was the tragic accident in Bhopal, India. The Bhopal incident underscores the value of having a system such as Price-Anderson to provide prompt compensation.

After reflecting on these events, I reaffirm my commitment to the objective of assuring that timely and full compensation is available for those injured in the unlikely event of a nuclear accident covered under Price-Anderson.

Q.10 What role, if any, should the Federal Government play in providing nuclear liability insurance? Isn't such insurance coverage more properly the responsibility of the private sector, which has provided such coverage in other areas? If availability of such insurance is the key problem, what does that suggest about the risks associated with operating a nuclear power plant?

A.10 I believe that the Federal Government should play the role provided for in S.1225. In the unlikely event of a catastrophic accident, I do believe that the Federal Government should become involved as it does in other similar situations.

Under our statute, a nuclear power plant cannot be licensed to operate unless there is reasonable assurance that the operation will be without undue risk to the public health and safety. Although the probability of a nuclear accident with major offsite consequences to the public is highly unlikely, such an accident cannot be ruled out with absolute certainty. I am not aware that the insurance industry has refused to insure against this risk.

Q.11 Do you see any inconsistency in assertions that nuclear reactors are safe and the refusal of the insurance industry to insure against this risk? How should this problem be addressed?

A.11 I agree with the observation made in NRC's Report to Congress on the Price-Anderson Act (NUREG-0957) that the nuclear energy hazard has been and is still viewed by private insurers as being unique. Thus, while I believe that the chances of a catastrophic nuclear accident are very small, neither the nuclear utilities nor private insurers know with considerable certainty the probability of occurrence of such major accidents. Thus, as NUREG-0957 points out, they apparently regard the maximum probable loss as very large, not because the incident is regarded as "probable" in the popular sense but because there is not sufficient actuarial basis to justify ignoring such a possibility.

Q.12 If under a liability scheme there is a limit on liability, do you believe vendors and architect engineers should be subject to liability claims for amounts in excess of the cap?

A.12 I believe that the compensation plans called for in S.1225 would deal with this as the specific circumstances justified. I would note that the Commission's December 1983 recommendation would not accommodate this concern.

Q.13 Do you believe it is equitable that a utility with a good safety record should sustain the same financial loss, in the event of an extraordinary nuclear occurrence, as a utility experiencing an accident that was negligent in assuring the safety of the facility? Should Price-Anderson legislation attempt to distinguish among utilities on this basis?

A.13 Not necessarily. Please see my answer to Question 12. I would also note that the December 1983 recommendation does not accommodate this concern either. Indeed, under that proposal, a utility with a good safety record may incur unlimited liability of substantial, prolonged, and unknown amounts for an accident caused elsewhere by the negligence of another utility. These costs would undoubtedly be passed along, perhaps in perpetuity to the customers of the utility with the good safety record. As noted in my answer to Question 1, this is one reason why I have changed my position on the December 1983 recommendation and now find the objectives and approach in S.1225 a more equitable approach which should also provide for full and timely compensation.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
COMMISSIONER

June 21, 1985

The Honorable George J. Mitchell
Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Senator Mitchell:

Enclosed are my responses to questions you requested me to answer for the record as part of your consideration of my nomination by the President to be a member of the United States Nuclear Regulatory Commission.

Sincerely,

Thomas M. Roberts

Enclosure:
As stated

cc: The Honorable Lloyd Bentsen

Senator George J. Mitchell

MATERIAL FALSE STATEMENT

Q.1 Is there a need to revise the way in which the Commission treats material false statements in its proceedings?

A.1 Yes, I believe that there is a need to revise the way in which the Commission treats material false statements in its proceedings. The present definition is unnecessarily broad. The broader one defines material false statement, the greater the potential for licensees to be more guarded in voluntarily sharing information with the NRC. Thus, I believe we must strike a balance between a strict interpretation of "material false statement" and the Commission's objective of having free flow of information to facilitate our regulatory responsibility of protecting the public's health and safety.

At present any false written statement and any false oral statement, whether required or volunteered and regardless of whether under oath or affirmation, and any omission rendering a written or oral statement false, can be cited by the NRC as a material false statement under the definition established in the North Anna decision if the statement has an intrinsic capability or tendency to influence a "reasonable agency expert", regardless of the state of knowledge of the "reasonable agency expert" and regardless of the state of mind of the maker of the statement. Reliance on the statement is not required. I do not believe that so broad a definition was intended by Congress or is necessary to enable the Commission to carry out its obligation to assure that public health and safety is adequately protected. My reading of Sections 182 and 186 of the Atomic Energy Act leads me to believe that only materially false statements in the application and in written statements of fact required under Section 182 of the Act

should be cited as material false statements. The Commission is presently awaiting a report from its Advisory Committee on Enforcement Policy before acting on a Staff proposal that would revise the definition of the term "material false statement."

Q.2 Should the Commission's material false statement standard include oral statements?

A.2 Since my reading of Section 182 of the Atomic Energy Act leads me to believe that the Commission should base its licensing decisions on written information provided under oath or affirmation, I do not believe that the standard should include oral statements.

Q.3 Should the Commission change its present practice of considering as a material false statement acts of omission by the licensee or applicant in supplying information to the NRC?

A.3 Yes, only when an omission, knowingly made with an intent to deceive or with careless disregard for its completeness or accuracy renders a statement in the application or a written statement required under Section 182 materially false, do I believe it should be considered to constitute a material false statement. The Commission currently also labels as material false statements omissions which render oral statements false.

Q.4 Is the present standard an unfair burden to licensees or a detriment to effective regulatory oversight?

A.4 I understand that testimony given to our Advisory Committee on Enforcement Policy by representatives of the industry indicates that some in the industry view the standard as burdensome and unfair. Under the standard as currently applied, regardless of what the NRC experts may already know, a material false statement has been made if the NRC views any inaccurate oral or written statement as having an intrinsic capability to influence a reasonable agency expert on a licensing decision or any omission as arguably related to an issue of importance to a licensing decision. I want to wait for the Committee's report to the Commission before deciding for myself what the impact of the current standard on the effectiveness of our enforcement policy may have been.

Q.5 In your term as a Commissioner, how many times has the Commission considered cases involving material false statements? How many involved oral statements? How many were rated as Severity Level I or II? How many involved acts of omission? In how many cases did you dissent from the majorities' position in these cases?

A.5 Since I took office on August 3, 1981, the Commission has considered 16 cases involving material false statements. Three cases involved oral statements. Two cases were rated Severity Level I and three cases were rated Severity Level II. Five cases involved acts of omission. I dissented from the position of the majority in eight cases.

SOURCE TERM

Q.6 Both the American Physical Society and the American Nuclear Society have completed work on "source term" calculations. What is your opinion of these research efforts? If the source term research withstands peer and staff review, what application would this research have?

A.6 At this time, there are indications that some of the plants, PWRs with large dry containments, are likely to release small fractions of the source terms previously estimated. Other plants have not been scrutinized in as much detail and should be further examined.

There has been a significant large scale effort which has enjoyed the benefit of a great deal of cooperation and information exchange during the research. The work has been reviewed by knowledgeable engineers and scientists. Additionally, the NRC staff has sought an independent review of the methodology and analysis from the American Physical Society.

Since there still appear to to be differing opinions as to the methodology used in the research efforts, over the next two to three years the NRC expects to review all source term regulations for the need to change them. Most significant of these are the reactor siting and emergency planning rules, containment performance, equipment design and performance and equipment qualification regulations.

Q.7 The research may lead some to conclude that the releases from an accident may be less threatening then previously believed. Since source term is a key component of mitigation strategies, do you believe this research should cause the NRC to reconsider such strategies, including review of emergency planning zones? Are you ready to begin such reconsideration at this time?

A.7 This research may provide insights to allow the NRC to better review emergency response strategies. There are some indications that in general the most effective strategy for protection of public health and safety would be to seek shelter. The current strategy would more often lead to evacuation and therefore could increase the exposure of the public and emergency response teams. Recent research indicates that containment failure, if it occurs, will be later in any accident sequence than previously thought and therefore there would probably be time to shelter people.

The staff has been directed to conduct a review of the affected regulations and to bring to the Commission any proposed revisions to the regulations that are technically warranted based on the best information available. The staff is also to identify any added research needed to bring the source term work to completion in all plants.

Q.8 Do you believe review of emergency planning zone regulations should occur simultaneously with the Commission's consideration of source term or should the source term issue be decided first?

Q.8 The source term results can be applied once we have completed the research. For the classes of plants where the work is not complete, the source term research should continue until the Commission is satisfied that it has technically sound and well-founded data on which to make plant specific decisions. I would prefer to wait until there is extensive review and peer analysis of the source term work before applying the source term findings to reviewing emergency planning zone regulations.

GRAND JURY ACTIVITY

Q.9 You are aware of the present federal grand juries which included in the scope of their proceeding NRC licensing or regulatory activities. Please discuss whether or not the present level of grand jury activity indicates any failure on the part of the Commission to perform its responsibilities.

A.9 Since grand jury proceedings are secret, I do not know what the various grand juries currently are investigating. However, I do not believe that the present level of grand jury activity necessarily indicates any failure on the part of the Commission to perform its responsibilities.

**UNION OF CONCERNED SCIENTISTS** 1346 Connecticut Avenue, N.W. • Suite 1101 • Washington, DC 20036 • (202) 296-5600

June 18, 1985

Hon. Robert T. Stafford
Chairman, Committee on Environment and Public Works
U. S. Senate

Dear Mr. Chairman:

The Union of Concerned Scientists wishes to place on your Committee's record our very strong opposition to the renomination of Thomas Roberts to the Nuclear Regulatory Commission.

It is difficult to evaluate a nominee for any office who has little or no track record in the field in question, as Commissioner Roberts did when he was first selected for the NRC; all the nominee must do to pass muster is to voice the proper platitudes and avoid grievously embarrassing errors. A renomination, particularly one to a regulatory agency whose performance is critical to the protection of the public health and safety, is an altogether different matter. While we certainly understand the deference that the Senate extends to any Presidential appointee, we believe that deference should be balanced by a concern for the public to the extent that a full review of the appointee's record in office is warranted.

A review of his record will show that Commissioner Roberts' tenure from 1981 to the present has been marked by a one-sidedness the likes of which it is difficult to remember even in this unique agency. It is not merely that Commissioner Roberts has consistently -- in fact, virtually always -- voted in accordance with the position taken by the nuclear industry. It is his unfailing refusal to seriously consider the arguments of any other party -- particularly those among the general public who may be opposed to industry actions -- that makes him unfit to continue in this high office. The attached excerpts from the NRC's closed meetings on the Three Mile Island unit 1 restart proceeding, which we also request be made a part of the record, provide just a few examples of this bias.

More broadly, many of the Commission's actions over the past four years demonstrate a willingness to ignore and forget the lessons of the Three Mile Island accident -- a willingness that should give pause to those who most strongly hope to restore the public's confidence in the nuclear option. These actions are compiled in detail in a recent UCS study, "Safety Second: A Critical Evaluation of the NRC's First Decade", a copy of which is attached to this letter. Commissioner Roberts was a party to, and often a strong advocate of, virtually every decision that restricted the public's right to participate in NRC proceedings and that weakened or postponed the implementation of stricter safety standards. Commissioner Roberts' record deserves a thorough, objective Congressional review, which we hope will take place in this reconfirmation process.

Sincerely,

Michael E. Faden
Legislative Counsel

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STATEMENTS MADE BY COMMISSIONER ROBERTS DURING CLOSED MEETINGS ON TMI RESTART

December 9, 1981

(Tran. p.57) The Commission is discussing whether Metropolitan Edison Company withheld information about the seriousness of the TMI-2 accident from State and Federal government officials (the House Interior Committee majority staff concluded that the company did):

Commissioner Roberts: "Well, the worst case. Suppose they did lie three years ago. What is the relevance of that today? I am not prepared to say they did lie. I am just making a supposition."

(Tran. p.60) The Commission is discussing confusing statements made by staff member Victor Stello, concerning whether or not he believed that Met Ed had intentionally withheld information from the State and Federal governments. The commissioners plan to ask Stello to explain his beliefs at a Commission meeting. Roberts objects:

Commissioner Roberts: "Whatever [Stello] says and whatever transpires in no way is going to affect my decision on the restart of the plant."

September 10, 1982

(Tran. p.29) The Licensing Board has imposed a $100,000 fine on the utility for cheating incidents. The commissioners are discussing taking jurisdiction away from the Licensing Board and turning the matter over to the Office of Investigations (this is called "option 3"):

Commissioner Ahearne: "Tom [Roberts], when you said you would go for option three, did that include giving this to OI?

Commissioner Roberts: "Not necessarily." (Laughter follows.)

* * *

Commissioner Gilinsky: "You mean do nothing." (Laughter follows.)

(Tran. p.31) Commissioner Ahearne mentions that the utility has already agreed to pay the fine:

Commissioner Roberts: "That is rather troublesome."

(Tran. pp.41-2) The commissioners are discussing whether or not to allow the parties oral argument in front of the Commission:

Commissioner Roberts: "Well, as you say, it is personal. I find little benefit from the oral argument."

* * *

Commissioner Roberts: "The presenters have not developed the information."

Commissioner Ahearne: "That is right."

Commissioner Roberts: "And they can't answer a substantive question."

March 10, 1982

(Tran. p.26) Commissioner Roberts: "If the [license] suspension were lifted, could the plant go back in the rate base?"

Dec. 1, 1982

(Tran. p.8) The Commission is discussing the the steam generator tube repairs at TMI-1. The Deputy General Counsel mentions the possibility that the license amendment for operating with the repairs might require a hearing prior to restart:

Commissioner Roberts: "Is it crystal clear there must be a license amendment?"

(Tran. pp.56-7) The Deputy General Counsel explains that if the reasons which caused the Commission to shut down the plant were no longer present, then the Commission must lift the shutdown order, but that the question is academic because the plant is shut down for other reasons, and the licensee is therefore not being injured. Roberts, again apparently concerned about getting the plant back in the rate base, considers lifting the shutdown order and then letting the plant go down for maintenance:

Commissioner Roberts: "If the plant is shut down for maintenance, or whatever, is it out of the rate base."

Mr. Malsch: "As a general matter if it is shut down for maintenance it is still used and useful and is in the rate base. Now I don't know whether this one is or is not."

Commissioner Roberts: "I am not sure I accept your statement that we are not causing any injury to the licensee."

Chairman Palladino: "I agree with Tom. It is not clear to me either."

Mr. Rothschild: "Well, the utility commission here has said that they are not going to put it in the rate base until it has been operating at at least 35 percent power for 72 hours or something like that."

Commissioner Roberts: "Thank you."

November 8, 1983

(Tran. pp.15-16) In a Commission discussion of the criminal indictment against Met Ed for falsification of leak rate data, the Office of General Counsel says that Roberts had asked them: "where in the Atomic Energy Act is

there a requirement that management or other personnel or firms to which the NRC issues reactor licenses must be persons found by NRC to be of suitable integrity?" OGC responds that the statute clearly contains such a requirement.

(Tran. pp.89-90) The Commission is discussing whether or not to have a public meeting concerning the restart decision:

Commissioner Roberts: "Let me ask you just a very general thought. You don't think our decisionmaking and our interchange of ideas is inhibited by a public meeting?"

Jan. 16, 1984

(Tran. p.35) In Commission discussion of the criminal indictment against Met Ed for falsification of leak rate data:

Commissioner Roberts: "I've never been criminally indicted and I sure as hell fought any number of unfair labor practices and EEOC charges, all of which I was absolved from. And just because you are charged with some wrongdoing is meaningless. I attach no importance to the indictment per se."

Jan. 26, 1984

(Tran. pp.12-13) The Commission is considering voting on a roadmap for restart:

Commissioner Roberts: "I defer to you, Joe [Chairman Palladino.]"

* * *

Commissioner Roberts: "I don't comment on the merits. You have my proxy, whatever you want to do." (Laughter follows.)

(Tran. p.32) The Commission is planning for a public meeting to be held the next day, and discusses whether they should allow the parties, in particular the intervenors, to comment:

Commissioner Roberts: "Anything we are liable to hear tomorrow is not going to affect our decision."